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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Implementation of the Local Competition Provisions)	
Of the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
Applications for Consent to Transfer of Control of)	
Licenses and Section 214 Authorizations from)	
Ameritech Corporation, Transferor, to SBC)	CC Docket No. 98-141
Communications, Inc., Transferee)	
)	
Common Carrier Bureau and Office of Engineering)	NSD-L-00-48
And Technology Announce Public Forum on)	
Competitive Access to Next Generation)	
Remote Terminals)	

**COMMENTS OF PRISM COMMUNICATION SERVICES, INC. IN SUPPORT OF
THE PETITION OF ALTS FOR DECLARATORY RULING REGARDING
BROADBAND LOOP PROVISIONING**

Respectfully submitted,

PRISM COMMUNICATION SERVICES, INC.
Randall B. Lowe, Chief Legal Officer
Julie A. Kaminski, Deputy Chief Counsel
– Telecommunications

June 23, 2000

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SUMMARY

Local loop provisioning is the competitive linchpin to the success of a local and broadband wireline service provider. The lack of certainty and enforceable remedies surrounding the ILECs' obligations with respect to loop provisioning, however, has resulted in competitive LECs (CLECs), data LECs (DLECs) and integrated communications providers (ICPs), which provide both voice and broadband data services, being disadvantaged in their ability to compete. A clear and expedient federal declaration -- as opposed to piecemeal 271 proceedings -- is therefore needed to lend the necessary guidance to the fundamental issues related to loop provisioning in the broadband arena.

Prism therefore fully supports ALTS' Petition and its effort to level the playing field between ILECs and their competitors with respect to successfully provisioning customer orders. In addition to the specific requests for declaratory rulings set forth in ALTS' Petition, however, Prism has certain additional concerns related to the ILECs' treatment of ICPs and the availability of copper facilities. As regards the availability of copper, Prism also seeks a Commission ruling that (i) ILECs must offer their competitors the same processes and procedures they use to guarantee copper loops to their customers served by copper-dependent technologies and not migrate a CLEC's copper loop if doing so will disrupt the end user's services; and (ii) ILECs must offer to requesting competitors the right to purchase at fair and reasonable prices the copper facilities that the ILECs abandon or decommission. As an ICP, Prism also requests that the Commission expressly find that ILECs are prohibited from impeding ICPs from offering any part of their service offerings and that ILECs must offer their competitors access to loops and subloops to provide integrated voice and data services on the same terms and conditions and within the same time frames that it offers access to loops and subloops for its own or its affiliates' integrated service offerings. Finally, given its experience with ILECs, Prism asks that any provisioning intervals established in this proceeding should apply to the delivery of a working circuit.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability)	CC Docket No. 98-147
)	
Implementation of the Local Competition Provisions Of the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
Applications for Consent to Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee)	CC Docket No. 98-141
)	
Common Carrier Bureau and Office of Engineering And Technology Announce Public Forum on Competitive Access to Next Generation Remote Terminals)	NSD-L-00-48
)	

**COMMENTS OF PRISM COMMUNICATION SERVICES, INC. IN SUPPORT OF
THE PETITION OF ALTS FOR DECLARATORY RULING REGARDING
BROADBAND LOOP PROVISIONING**

In response to the Commission's Public Notice,¹ Prism Communication Services, Inc. ("Prism") hereby submits its Comments in support of the Petition for Declaratory Ruling filed by the Association for Local Telecommunications Services (ALTS) regarding broadband loop provisioning.² In its Petition, ALTS seeks a declaratory ruling from the Commission that governs aspects of the provisioning process for UNE loops that support broadband technologies and requests that the Commission clarify and modify its existing rules and policies to account for

¹ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, *et al.*, CC Docket Nos. 98-147, 96-98, 98-141 and NSD-L-00-48, *Public Notice*, DA 00-1141 (rel. May 24, 2000) ("Public Notice").

² In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability *et al.*, CC Docket Nos. 98-147, 96-98, 98-141 and NSD-L-00-48, *Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Provisioning*, filed May 17, 2000 ("Petition").

the unique circumstances of the broadband environment. Prism supports ALTS' Petition and hopes that the Commission will act swiftly and decidedly on this important matter. As is set forth herein, clear and expedient relief is necessary to encourage a robust and competitive marketplace for local and broadband services.

Local loop provisioning is the competitive linchpin to the success of a local and broadband wireline service provider. More than four years after the enactment of the Telecommunications Act of 1996, however, the lack of certainty and enforceable remedies surrounding the ILECs' obligations with respect to loop provisioning has resulted in competitive LECs (CLECs), data LECs (DLECs) and integrated communications providers (ICPs), which provide both voice and broadband data services, being disadvantaged in their ability to compete. As is stated in ALTS' Petition, for "loop access, ILECs are still the only game in town."³ In this environment -- where competitors such as Prism must go to their chief rivals to obtain the facilities necessary to compete -- there is clearly no room for uncertainty or ambiguity. As has been proven over the past four years, any amount of uncertainty or ambiguity will be used by the ILECs to avoid their statutory obligations and to impede competition. A clear and unambiguous federal statement is therefore needed to lend the necessary guidance to the fundamental issues related to loop provisioning. The matters raised in the Petition go a long way toward reaching this goal.

A federal pronouncement must not only be clear, but expedient. Speed to market is paramount in this arena. If federal guidance is not immediately brought to bear on ILECs' loop provisioning obligations, the ILECs may run away with the lion share of broadband customers before others have even had a chance to compete. Notwithstanding this, the current trend is for the Commission and/or state commissions to examine these issues in connection with an incumbent's application for Section 271 relief, as was done in New York and Texas. Competitors

³ See ALTS Petition at 6.

should not be required to wait until an ILEC files for 271 relief to obtain their basic rights necessary to compete. A federal declaratory ruling, as opposed to piecemeal 271 proceedings, is essential.

For the foregoing reasons, Prism fully supports the Petition, particularly insofar as it requests that the Commission should:

- Hold that Rule 51.319 requires ILECs to provide entire loops to CLECs providing integrated voice and data services;
- Ensure that ILECs will continue to make copper available especially to broadband service providers, particularly in the context of ILEC “upgrades” to their networks;
- Adopt federally binding intervals for provisioning of UNE loops;
- Require ILECs to provide access to loops and subloops wherever possible in a manner that will support provision of multiple service (including integrated voice and data services);
- Hold that Rule 51.319 requires ILECs to provide high-capacity transmission circuits to any requesting CLEC on a nondiscriminatory basis and without unnecessary delay;
- Ensure that all loop de-conditioning charges adhere to TELRIC principles; and
- Set prima facie federal penalties and sanctions for ILEC failure to comply with these rules.

As a corollary to these requests, Prism also asks that the Commission expressly find that:

- ILECs must offer their competitors the same processes and procedures they use to guarantee copper loops to their customers served by copper-dependent technologies and not migrate a CLEC’s copper loop if doing so will disrupt the end user’s services;
- ILECs must offer to requesting competitors the right to purchase at fair and reasonable prices the copper facilities that the ILECs abandon or decommission;
- ILECs are prohibited from impeding ICPs from offering any part of their service offerings and that ILECs must offer their competitors access to loops and subloops to provide integrated voice and data services on the same terms and conditions and within the same time frames that it offers access to loops and subloops for its own or its affiliates’ integrated service offerings; and
- Any provisioning intervals established in this proceeding should apply to the delivery of a working circuit.

- A. The Commission must ensure that copper loops remain available to competitors and that ILECs do not migrate copper loops being used by competitors to offer services supported by copper-dependent technologies.

Prism is an integrated communications provider offering both voice and advanced data services using an ADSL-type technology that merely requires a copper loop (including a copper POTS loop) from the incumbent LEC. Like most xDSL service providers, Prism cannot offer its services over loops carrying fiber digital loop carrier (DLC). Inasmuch as the provision of advanced services such as xDSL technologies is dependent upon the availability of copper, copper facilities in the incumbent LECs' network must be preserved for advanced services to truly thrive. The Commission must take action to preserve CLEC access to copper loops and those services being provided over copper loops.

Although the Commission has acknowledged the importance of copper loops to the continued vitality of the broadband services market,⁴ more recent developments make clear that further elucidation is necessary to ensure that competitive providers of advanced services will continue to have access to the copper facilities they need to deploy advanced services. Case on point: SBC's Project Pronto. Although CLECs have persistently raised the issue of their continued need for copper, SBC has failed to provide any real commitment related to the manner in which it will maintain or decommission copper facilities within the Project Pronto network.⁵

⁴ See, e.g., UNE Remand Order at ¶ 218 (“[t]hird, competitors seeking to offer services using xDSL technology need to access the copper wire portion of the loop. In cases where the incumbent multiplexes its copper loops at a remote terminal to transport the traffic to the central office over fiber DLC facilities, a requesting carrier’s ability to offer xDSL service to customers served over those facilities will be precluded, unless the competitor can gain access to the customer’s copper loop before the traffic on that loop is multiplexed.”)

⁵ See, e.g., Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas, PUC Project No. 20400, *Transcript of Proceedings Before the Public Utility Commission of Texas* (Workshop Monday, June 5, 2000) at 72-73 (SBC witness stating that “[t]here’s no *immediate* plans to remove that copper [loop that is currently serving the customer.]”)(emphasis added) and at 109-110 (SBC witness stating that “[w]e do not have plans – immediate plans to drag the copper out of the ground ... [h]owever, if copper becomes unmanageable, unmaintainable or problems exist that we just can’t simply fix it or continue to provide adequate services over it, then certainly it has to be SBC’s option to do something about that copper ...”)

CLECs should not be required to rely upon the supposed good faith of the ILECs to ensure their continued viability in the broadband marketplace.

Accordingly, ALTS asks the Commission to clarify as a matter of federal law that ILECs must provide alternatives to DLC-served loops, in the form of “swapping” out an in-service fiber loop with a dormant copper loop or a “work around” configuration.⁶ While Prism supports this position, it wishes to underscore the words “dormant copper loop.” An ILEC should be prohibited from taking a copper loop that is being used by a CLEC to provide broadband service and give that copper loop to another carrier.

For example, Prism’s technology allows it to use a copper POTS loop (as opposed to a so-called ILEC-prescribed “DSL loop”) to provide its advanced services. If Prism is using a POTS loop to provide its xDSL-type services, an ILEC should be prohibited from migrating Prism’s customer to another loop (such as a fiber loop) and taking Prism’s copper loop if doing so will disrupt or prevent Prism from offering its services to the customer.

Although ILECs use a copper POTS loop to offer their ADSL service offerings and have put internal processes in place to ensure that the POTS loop will remain copper and will not be migrated to a fiber loop, they decline to do the same for Prism. The ILECs take the position that in order to be guaranteed a copper loop, Prism must order a “DSL loop.” As a result, Prism has been forced to argue before state commissions its right to receive the same treatment that the ILECs maintain for themselves. A copper loop is a copper loop, regardless of what an ILEC may call it (POTS or DSL loop) and must remain a copper loop if necessary to provide service to a customer. A federal ruling on this issue will obviate the need for state-by-state or ILEC-by-ILEC negotiations for the sole purpose of seeking equal treatment. Accordingly, in addition to the requests by ALTS related to maintaining the availability of copper facilities, Prism respectfully requests that the Commission further explicate that an ILEC must provide CLECs the

⁶ ALTS Petition at 11.

same process and procedures it uses to guarantee copper loops to its customers deployed over copper-dependent technologies and not migrate a CLEC's copper loop if doing so will disrupt the end user's services.

Moreover, the Commission should make a specific finding that an ILEC must offer to a requesting carrier the right to purchase the copper facilities that the ILEC abandons or decommissions. In accordance with the old adage "one's person's trash is another person's treasure," a competitive carrier may have much use for a copper facility that an ILEC deems to have passed its useful life. Although Prism has offered to purchase copper facilities from ILECs, its requests have fallen on deaf ears. This policy would avoid the results of allowing the ILECs to unilaterally determine when a copper facility should be decommissioned and enable their competitors to rescue the copper that is so fundamental to the proliferation of broadband services.

- B. The Commission should make clear that ILECs are not are able to discriminate against integrated communication providers (ICPs) and that ICPs are not impeded from offering any part of their services.

The world is moving towards integrated providers of telecommunications services and away from a data-only or voice-only model.⁷ Consequently, in order to avoid a return to the monopolistic environment, it is imperative that ICPs – such as Prism -- and not just ILECs, are able to offer integrated voice and data services. The ILECs, however, are already attempting to thwart the ability of ICPs to offer integrated voice and data services.

As currently contemplated within the Project Pronto architecture, an ICP would need to order two loops to reach a customer with a voice and data offering while SBC would provide voice and data to that customer over a single loop.⁸ SBC initially refused to allow an ICP to provide integrated services to customers served out of remote terminals on the grounds that

⁷ See Communications Daily, June 6, 2000 at 3.

⁸ ALTS Petition at 14.

CLECs cannot line share for themselves.⁹ Such a position is absurd and points up the need for further federal clarification on this issue. Although SBC has since agreed to look into how to implement Project Pronto in such a way that allows for CLECs to offer integrated services, SBC has not committed to any time frame. As a result of the ongoing ambiguity surrounding an ICPs ability to offer multiple services over the Project Pronto architecture, ALTS requests a Commission ruling that CLECs providing integrated services must be able to access subloops in a manner that supports provisioning of multiple services over a shared line.

Prism supports ALTS' request, but believes that even further clarification is necessary. Prism respectfully requests the Commission to declare that an ILEC must offer its competitors access to loops and subloops to provide integrated voice and data services on the same terms and conditions and within the same time frames that it offers access to loops and subloops for its own integrated service offerings. Just as the ILECs provide voice and data services over a shared line to provide their xDSL services, so too must they allow any requesting CLEC. The Commission must support the most efficient use of the facilities to provide the greatest benefits to consumers. The ILECs must therefore offer ICPs nondiscriminatory access to loops and subloops and must not be allowed to impede or prevent in any way an ICP from offering any part of its integrated services.

C. The Commission should establish federally binding loop provisioning intervals.

A CLEC's statutory right to obtain an unbundled loop from an ILEC is only as good as the CLEC's ability to obtain the loop in a timely and accurate fashion. In the absence of timely delivery, the CLEC will lose customers and competition will never take hold in the advanced services market. In this context, it is absurd that in most instances there is no guidance as to what constitutes timely and accurate delivery of a loop. This gap has allowed ILECs to continue to

⁹ *Id.*

block competition¹⁰ and impeded the CLECs' ability to enforce their statutory right to an unbundled loop; *i.e.*, their right to compete.

The Commission should use its authority under Section 251¹¹ or Section 706¹² of the 1996 Act to adopt binding, federal loop provisioning intervals that may be used as a national ceiling for measuring ILEC performance. As evidence of a reasonable provisioning interval, ALTS points to the provisioning standard established by the Texas Public Utility Commission (PUC). The Texas PUC requires that the incumbent LEC provision 95% of xDSL orders within 3 business days (for 1-10 loops), 7 business days (11-20 loops) and 10 business days (20+ loops), taking into account prequalification and conditioning requirements.¹³ Of course, if a shorter loop provisioning interval is provided to an incumbent affiliate, the competitive LECS are likewise entitled to the shorter provisioning interval.

Prism agrees with ALTS that, in the context of today's operation support systems and methods and procedures, the xDSL order provisioning standard adopted by the Texas PUC is reasonable and appropriate as a national standard.¹⁴ There is no reason that the Commission should not be able to establish loop provisioning intervals that apply throughout the country. Although each of the ILEC's ordering systems may not operate the same, they should be capable of handling loop orders within the same timeframes. Moreover, setting a provisioning standard at "parity for retail services" is not particularly effective as it is nearly impossible to ascertain with

¹⁰ See ALTS Petition at 24 (describing how Bell Atlantic provides retail DSL service to an end user within a maximum of 6 calendar days from the date of order while CLEC loop orders often languish for weeks within the Bell Atlantic system.)

¹¹ 47 U.S.C. § 251(c).

¹² 1996 Act, § 706(b).

¹³ ALTS Petition at 27.

¹⁴ These intervals, however, should take account of whether or not prequalification is required. For example, if a CLEC does not need a loop prequalified in order to offer its advanced services over the loop, the starting time (application date) should be the date the order is submitted.

any amount of certainty the timeframes in which an ILEC provisions its own retail services. The federally prescribed provisioning intervals for xDSL orders should be a ceiling, however, not a floor. To the extent that a state commission finds, or a CLEC can show, that shorter intervals are appropriate, the shorter intervals should apply.

Prism also requests that the Commission clarify that the provisioning intervals apply to the delivery of a *working* circuit. Having an ILEC meet the provisioning interval but deliver a non-working circuit does nothing to help the CLECs. In Prism's experience, it is common for an ILEC to deem an order complete, but Prism's technicians later find otherwise. In those instances, an ILEC may require the CLEC to supplement (or "supp") the order, which establishes a new due date for the order and convolutes the data as to whether the ILEC has met its provisioning commitment. Prism therefore requests that the Commission rule that in those instances where an ILEC deems a circuit to be complete but the CLEC finds it is not working properly, the ILEC will not require the CLEC to supplement the order, but will work with the CLEC to install a working circuit as quickly as possible. That is, the incomplete circuit will be treated by the ILEC on a priority basis. The original due date for the circuit should be the point from which it is determined whether the ILEC met its provisioning commitment.

To the extent that prequalification or conditioning is required, the Commission should ensure that the ILECs do not use prequalification or deconditioning as a pretext to delay delivery of the loop, but should adopt a federally binding interval for ILEC deconditioning that provides uniform guidance to all carriers. Although it would seem unnecessary but for the anticompetitive activities of the ILECs, Prism concurs with ALTS that the Commission must reaffirm that ILEC deconditioning charges, including recurring and nonrecurring charges, must adhere to forward-looking, cost-based Total Element Long Run Incremental Cost (TELRIC) principles. The ILECs must be prevented from attempting to impose inordinately inflated deconditioning charges that render it economically difficult for CLECs to offer services.

- D. The Commission should preclude ILECs from adopting policies that unnecessarily extend the amount of time it takes a CLEC to enter a market.

In its Petition, ALTS directs the Commission's attention to an ILEC policy that prohibits CLECs from ordering transmission facilities to their collocation cage until cage completion. The effect of this mandatory sequential ordering process is that it unnecessarily extends the date on which a CLEC can serve customers out of the collocation site by the period of time it takes to order and accept the transmission facilities -- up to 45 days. CLECs should be able to order transmission facilities concurrently with the build-out of their collocation cages in order to facilitate an earlier and seamless entry into the market.

Prism submits that there is no technical or administrative reason as to why CLECs should be prevented from ordering collocation and transmission facilities on a concurrent basis. In fact, one ILEC provides Prism with the Carrier Facility Assignment (CFA) number a certain amount of time in advance of the collocation completion date, thereby allowing Prism a jumpstart on ordering its transmission facilities. Other ILECS, however, have refused to do so. Prism submits that there is nothing which prevents the other ILECs from working with CLECs to allow transmission facilities to be ordered in such a way that the CLEC can service customers out of the collocation site immediately upon completion and acceptance of the collocation cage.¹⁵

Similarly, as described in ALTS' Petition, the Commission should require ILECs to inform CLECs whether a central office is served by high-capacity facilities prior to the CLEC building out its collocation facilities. In the absence of this requirement, CLECs run the risk of incurring the costs associated with collocation construction only to later find that the central office does not have sufficient transmission capacity to service their needs. If this information is

¹⁵ Prism submits that the mandatory sequential ordering policy is akin to the ILEC's policies prior to the Commission's Collocation Order, which required a CLEC to obtain a CPCN before it could proceed to order collocation facilities. As that ILEC policy has fallen, so should the sequential collocation/transmission facility ordering process.

made available to the CLECs – for instance on their website – CLECs would be better able to plan their collocation strategies and not run the risk of stranding facilities.

In sum, in order for competition to truly take hold ILECs must be prevented from impeding a CLEC's entry by raising spurious excuses of administrative inconvenience or to engage in delay tactics in provisioning their competitors' loops and circuits supporting broadband services.

E. The FCC should set *prima facie* federal penalties and remedies for ILEC noncompliance.

Any rules adopted in this proceeding must be backed by significant and meaningful penalties and remedies for an ILEC's failure to comply. Without these compliance remedies, CLECs will have no means by which to seek to enforce their rights and will be left to flounder at the feet of the ILECs. Accordingly, Prism supports ALTS' Petition insofar as it asks the Commission to adopt self-executing, *prima facie* monetary penalties, subject to a rebuttable presumption of applicability, for ILEC failure to comply with the provisioning rules established in this proceeding. Prism also supports ALTS' request that any finding of ILEC liability in this context will be considered part of the record of any subsequent Section 271 proceeding and will be given significant weight in the Commission's review.

Prism, however, questions whether monetary penalties are sufficient and therefore asks the Commission to consider whether other relief might be more appropriate. For instance, if a CLEC shows that an ILEC is not meeting its provisioning obligations, the Commission could require the ILEC to immediately adjust its work force administration so that the CLEC's pending orders have priority over the ILEC's or the ILEC's affiliate's pending orders and require the ILEC to make a showing to that effect.

F. Conclusion

For these reasons, Prism respectfully requests the Commission to issue a declaratory ruling clarifying, construing and, as necessary, modifying its rules applicable to provisioning of UNE loops in order to:

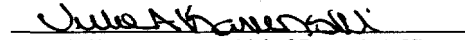
- Hold that Rule 51.319 requires ILECs to provide entire loops to CLECs providing integrated voice and data services;
- Ensure that ILECs will continue to make copper available especially to broadband service providers, particularly in the context of ILEC “upgrades” to their networks;
- Adopt federally binding intervals for provisioning of UNE loops;
- Require ILECs to provide access to loops and subloops wherever possible in a manner that will support provision of multiple service (including integrated voice and data services);
- Hold that Rule 51.319 requires ILECs to provide high-capacity transmission circuits to any requesting CLEC on a nondiscriminatory basis and without unnecessary delay;
- Ensure that all loop de-conditioning charges adhere to TELRIC principles;
- Set prima facie federal penalties and sanctions for ILEC failure to comply with these rules.
- Require ILECs to offer their competitors the same processes and procedures they use to guarantee copper loops to their customers served by copper-dependent technologies and not migrate a CLEC’s copper loop if doing so will disrupt the end user’s services;
- Require ILECs to offer to requesting competitors the right to purchase at fair and reasonable prices the copper facilities that the ILECs abandon or decommission;
- Prohibit ILECs from impeding ICPs from offering any part of their service offerings and require ILECs to offer their competitors access to loops and subloops to provide integrated voice and data services on the same terms and conditions and within the same time frames that it offers access to loops and subloops for its own or its affiliates’ integrated service offerings; and

- Find that any provisioning intervals established in this proceeding apply to the delivery of a working circuit.

Respectfully submitted,

PRISM COMMUNICATION SERVICES, INC.

By:



Randall B. Lowe, Chief Legal Officer

Julie A. Kaminski, Deputy Chief Counsel –
Telecommunications

June 23, 2000

CERTIFICATE OF SERVICE

I, Jane L. Hall, hereby certify that a correct copy of the Comments of Prism Communication Services, Inc. in response to the Commission's notice of Inquiry in CC Docket No. 98-141 was served via Courier to the following individuals, this 23rd day of June 2000.

Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Room 8-B201
Washington, DC 20554

Honorable Susan Ness
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-B115
Washington, DC 20554

Honorable Gloria Tristiani
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-C302
Washington, DC 20554

Honorable Michael K. Powell
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-A204A
Washington, DC 20554

Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-A302
Washington, DC 20554

ITS, Inc.
1231 20th Street, NW
Washington, D.C. 20036

Michelle Carey
Deputy Chief
Policy and Program Planning Division
Federal Communications Commission
445 12th Street, S.W.
Room 5-C122
Washington, DC 20554

Linda Kinney
Assistant Bureau Chief-
Special Advisor for Advanced Services
Federal Communications Commission
445 12th Street, S.W.
Room 5-C041
Washington, DC 20554

Mr. Lawrence E. Strickling
Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5-C457
Washington, DC 20554

Mr. Kyle D. Dixon
Legal Advisor
Federal Communications Commission
445 12th Street, S.W.
Room 8-A204A
Washington, DC 20554

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., TW-A352
Room 5-C327
Washington, DC 20554

Sarah Whitsell
Legal Advisor
Federal Communications Commission
445 12th Street, S.W.
Room 8-C302
Washington, DC 20554

Staci Pies
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5-C360
Washington, DC 20554

Carole Lott
Legal Advisor
Federal Communications Commission
445 12th Street, S.W.
Room 8-B201
Washington, DC 20554

Rebecca Beynon, Esq.
Legal Advisor
Federal Communications Commission
445 12th Street, S.W.
Room 8-A302
Washington, DC 20554

Mr. Kevin Martin
Legal Advisor
Federal Communications Commission
445 12th Street, S.W.
Room 8-A302
Washington, DC 20554

Mr. Jared Carlson
Legal Counsel to Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.,
Room 5-C434
Washington, D.C. 20554

Mr. Robert Atkinson
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.,
Room 356
Washington, D.C. 20554

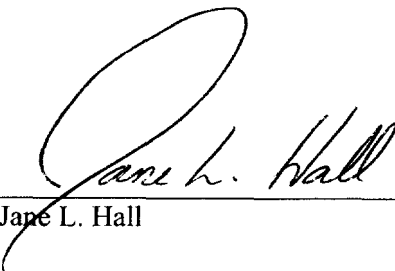
Mr. Jake E. Jennings
Special Advisor to Division Chief
Policy and Program Planning Division
Federal Communications Commission
445 12th Street, S.W.,
Room 5-C260
Washington, D.C. 20554

Ms. Dorothy Attwood
Senior Legal Advisor
Federal Communications Commission
445 12th Street, S.W.,
Room 8-B201
Washington, DC 20554

Mr. Jordan Goldstein
Legal Advisor
Federal Communications Commission
445 12th Street, S.W.,
Room 8-B115
Washington, DC. 20554

Jonathan Askin, Esq.
General Counsel
Association for Local Telecommunications
Services
888 17th Street, N.W.
Suite 900
Washington, DC 20006

Date: June 23, 2000



Jane L. Hall